A er, a witneſs for the proſecutors, aged 25 years and upwards, unmarried, who being ſolemnly ſworn, purged of malice and partial counſel, and being interrogate, If or not he had a converſation with Mr Macmaſter relating to Dr Kerr his ſubſcribing a paper? depones, That Mr Macmaſter had a converſation with him much
B as to the ſame purpoſe as mentioned in the libel, which he has juſt now heard read; but the preciſe time when this happened, he does remember. Being particularly interrogate for the purſuers, If Mr Macmaſter deſired him the deponent, to ſay to Dr Kerr, that it would be agreeable to Lord Stair, if the ſaid Dr Kerr would ſign
C that paper, or words to that purpoſe? depones, That ſuch a converſation, much to that purpoſe, paſſed between him the deponent, and Mr Macmaſter. And being interrogate, If the deponent replied to Mr Macmaſter, that if he never got the kirk of Stranrawer but at the expence of a lie, and a lie made by him, he ſhould never
D have it, or words to that purpoſe? depones, That the particular words of his anſwer he does not now remember, but that he refuſed to ſpeak to Dr Kerr as deſired. Being interrogate for the defender, Where this converſation ſhould have happened? depones, That it was between the burn of Stranrawer and his own tan-yard.
E Being further interrogate, Who were preſent when that converſation happened? depones, That there were none but themſelves two. Being further interrogate, How this converſation began? anſwered, That after common compliments paſſed, he the deponent aſked Mr Macmaſter, How all was going? meaning, How all
F went with reſpect to his views of ſucceeding Mr Blair as miniſter in Stranrawer. Being further interrogate, Whether or not Mr Macmaſter deſired him expreſsly to ſpeak to Dr Kerr, and propoſe ſuch a ſcheme? depones, That to the beſt of his knowledge, he did. And further remembers, that, as a part of his anſwer, he deſired
G Mr Macmaſter to keep to the truth, as it would keep the feet longeſt. Being further interrogate, If the defender ever inſinuate, on any other occaſion, that if Dr Kerr his ſigning that paper would be of the ſmalleſt conſequence to him the defender? depones *negative*. *Cauſa ſcientiæ patet &c.*

11 JU 62

Gilbert Laurie, *Eſquire*, *Lord Provoſt of the City of* Edinburgh, *and others, the Governors of the Hoſpital founded within that City, by the deceaſed* Geoge Herriot, *Jeweller*, - - - - } Appellants.

Walter Ferguſon *of the City of* Edinburgh, *Eſq*; *and* John Cleland, *late Gardener there*, - } Reſpondents.

The Reſpondents CASE.

12 Feb. 1624. *GEORGE HERRIOT*, a Native of *Edinburgh*, Jeweller to King *James* the Iſt, died at *London*, and by his Will, after numerous Legacies to his Relations and Friends, he bequeathed the Reſt and Reſidue of his Eſtate to the Provſt, Baillies, Miniſters, and Common Council of the City of *Edinburgh*, to erect an Hoſpital, and purchaſe Lands for maintaining and educating fatherleſs Boys, Sons of Freemen of the ſaid City, and nominated the ſaid Provoſt, Baillies, Miniſters, and Common Council, and their Succeſſors in Office, to be Governors and Feoffees in Truſt of the Lands, Poſſeſſions, Revenues, and Goods of the ſaid Hoſpital. By his ſaid Will he earneſtly beſeeches the Lord Chancellor of *Scotland*, the two Archbiſhops, *the Lord Preſident of the College of Juſtice*, *and the Lord Advocate* for the Time being, or any Thre of them, upon Complaint againſt the Governors, to examine, redreſs, and reform it; and declares, that in caſe the Governors ſhall fail in Performance of any fundamental Point, he gives and deviſes the Whole to the Univerſity of *St. Andrews*, for the Maintenance of ſo many poor Scholars in that Univerſity, as ſhall be nominated and appointed by the Rectors and Profeſſors thereof.

1626. The above Legacy was fully paid to the Amount of 43,608 *l.* 11 *s.* 3 *d.* Sterling.

The Governors at different Times purchaſed ſundry Parcels of Lands adjacent to the City of *Edinburgh*, and they have from Time to Time given off ſmall Parcels thereof to the Citizens, and ſome larger Parcels to the City of *Edinburgh*, at a Quit-Rent or Feu-Duty in Money or Grain, equal to the real Rent at the Time; and their Powers for ſo doing are unqueſtioned.

January 1733. In *January* 1733, *John Cleland* Gardener, gave in a Petition to the Hoſpital, praying for a Feu of Five Acres of the Hoſpital's Eſtate, at a Place called *Broughton Loan*, lying North of the City, a high Ground, and having a commanding Proſpect of the Firth of *Forth* and Country adjacent; with a profeſſed Intention to turn it to Account by ſubfeuing in ſmall Lots, and in Place of the then current Rent of 3 Bolls of Barley (about 1 *l.* 11 *s.* *per* Acre) he offered 50 Merks in Money (*i. e.* 2 *l.* 15 *s.* 6 *d.* $\frac{2}{3}$ Sterling) *per* Acre, of Quit-Rent or Feu-Duty: And this Petition, in common Courſe, being referred to a Committee, who reported thereon, the Governors paſt the following Reſolution:

29 Aug. 1733. "*Heriot*'s Hoſpital, 29th *Auguſt* 1733. Which Day the Lord Provoſt, Baillies, Miniſters, and Council of the good "Town of *Edinburgh*, Feoffees and Governors of *George Herriot*'s Hoſpital, being conveened in Council, it was reported "from the Committee to whom the Petition of *John Cleland* Gardener was remitted, craving a Feu of Five Acres of Ground, "or thereabout, on the Weſt Side of *Broughton Loan*; That they having conſidered the ſaid Petition, and viſited the "Ground, are of Opinion, that it is the Intereſt of the Hoſpital to feu to the Petitioner the Piece of Ground which runs, "*&c.* (deſcribing it) for Payment of 50 Merks *per* Acre, as the ſame ſhall meaſure out, of Feu-Duty yearly; and of "50 Merks each Acre, and proportionally, of Compoſition. Which Report being conſidered by the Council, they "approved thereof, and appointed the Ground to be meaſured, and a Charter to be extended in favour of the ſaid *John* "*Cleland*, containing all Clauſes *uſual* and neceſſary."

Cleland obſerving that the Figure of the Ground was ſomewhat irregular, and that a few Yards more to the North would make it ſquare, he made a ſecond Application for the Addition required; and this having been referred to the ſame Committee, the Governors recommended to them to treat with *Cleland* as to the Security he propoſed to give for Payment of the Feu-Duty.

The Feu-Duty being perpetual, it was impoſſible that any other Security could be meant or propoſed than improving the Eſtate by Building, ſo as to render it capable of yielding a Rent ſuperior to the Feu-Duty.

This being the very Object which *Cleland* had in View, he agreed to grant a Bond with two Securities, obliging himſelf to lay out at leaſt 1000 *l. Scots* (83 *l.* 6 *s.* 8 *d.* Sterling) in incloſing the Ground and building upon it, between and *Martinmas* 1736. And the Committee reported that the Deſire of the Petition ought to be granted, and that *Cleland* ought to 22 July, 1734. have his Charter, on Payment of 250 Merks (13 *l.* 17 *s.* 9$\frac{1}{3}$ *d.* Sterling) of Compoſition or Entry-Money: Which Report the Governors approved of, and appointed a Charter to be extended containing this Reſervation, "That it ſhall not "be in the Power of the ſaid *John Cleland*, his Heirs or Aſſigns, to ſtrike out a Door or Paſſage of any Kind from the "Ground feued out to them, after the ſame is incloſed, to the arable Lands of *Broughton*, either on the Weſt or North "Part of their Poſſeſſion, other than that Entry preſently open, which leads from the ſaid Lands to *Multreeshill*, and to "lay the ſaid Charter before the Council in order to be ſigned."

The Bond bears Date 4th *July* 1734, and binds *Cleland* and his Sureties to beſtow the Sum above-mentioned upon incloſing the ſaid Ground, and building ſufficient Houſes and others upon it, between and the Term of *Martinmas* 1736; and in caſe of Failure, he and his Sureties are taken bound to pay the ſaid Sum to the Hoſpital, to lie in the Hands of the Treaſurer until ſufficient Houſes, *&c.* ſhould be built.

Cleland entered to Poſſeſſion at *Martinmas* 1733, in Conſequence of the firſt Reſolution of the Governors abovementioned, an Extract of which had been delivered to him; and prior to *Auguſt* 1734 he had beſtowed ſome Expence in Building upon the Ground.

6 Aug. 1734. On the 26th of *Auguſt* 1734, *Cleland*'s Charter was ſubſcribed by the Governors, which contained the following Clauſe, that had not before been ſpoke of in this Tranſaction:) "That it ſhall not be leiſom (lawful) to the ſaid *John Cleland*, and "his foreſaids, to dig for Stones, Coal, Sand, or any other Thing, within the ſaid Ground, nor to uſe the ſame in any "other Way than by the ordinary Labour of Plough and Spade, without the expreſs Conſent and Liberty of the Gover-"nors of the ſaid Hoſpital, had and obtained thereto for that Effect."

Cleland, in Proſecution of this Plan, went on building Houſes upon the different Parts of the Ground. He firſt erected a Houſe for himſelf, two Stories in Height, afterwards two other Houſes near his own, and four more towards the North-Eaſt upon a different Part of the Ground.

A:

At an after Period he built two more Houſes, making in all Eight beſide his own, and which coſt a great deal more than the Sum contained in his Bond.—He likewiſe ſubfeued three different Lots of Ground to Meſſrs. *Gra. Stewart*, and *Ogilvy*, who built large Houſes upon their Feus, the Expence of which exceeded 2000 *l.* Sterling.

By theſe Subfeus the Ground was ſo cut and parcelled out as to render it altogether unfit for the Purpoſes of Agriculture, or for any other Uſe than that which was originally intended, of giving it off in ſmall Parcels for Building. The Subfeus make no Mention of any Reſtraint againſt Building, as it did not enter into the Minds of the Parties, that there was any Doubt on that Head.—Mr. *Gray*'s Subfeu, at firſt, only included three-fourths of an Acre; but after his Houſe was built, he applied for, and obtained a ſmall Addition, and likewiſe an Obligation from *Cleland*, not to build ſo as to intercept his Lights: And in the Subfeu to *Ogilvy*, an Obligation is laid upon the Subfeuer not to build upon one Part of his Ground above a certain Height, which was meant for the Benefit of ſome of the other Buildings.

The Governors of the Hoſpital ſaw theſe Operations going on under their Eye, and never made any Objection, or pretended to have the ſmalleſt Title, Right, or Intereſt to obſtruct the Buildings—Indeed it would have been ſtrange had they done ſo, when it was clearly for their own Benefit, as Superiors or Over-Lords, that the Vaſſal ſhould render the Eſtate more valuable by Building; and accordingly the Vaſſal had been expreſsly taken bound to lay out Money in that Way.

Dec. 1762. *Cleland* ſold the Eſtate to Mr. *Walker*, under the Burden of the Subfeus already mentioned, and of certain Uſes of other Parts of the Ground: And Mr. *Walker* afterwards ſold them to the Reſpondent Mr. *Ferguſon*.

The Scheme of extending the Royalty of the City of *Edinburgh* was not adopted till long after theſe Buildings had been raiſed; and though the Reſpondent and the Subfeuers of his Ground may probably now derive ſome Advantage from the Town being brought nearer to them, and from the Vicinity of the intended Houſe for the Public Records, the Situation of which has been lately fixed a little to the South-Weſt of theſe Acres, ſuch conſequential Benefit, which they may enjoy, in common with every other Proprietor of Land on that Side of the Town, cannot affect, or alter the Nature of their Rights, eſpecially, as on the other Hand, by their not being included within the Royalty, they have no Claim to theſe Advantages of Water, Common-Sewers, and other Articles which fall within the Regulation of the extended Royalty.

In order to accommodate the Truſtees for building the Regiſter-Houſe, the Reſpondent Mr. *Ferguſon* gave up a Road entering his Grounds from the South, and paſſing through the intended Area of the Regiſter-Houſe nearly in the Middle, upon their making another Road for him in a different Place, in order to anſwer for the Entry into his intended Square, he having declared his Reſolution of building upon that Part of the Grounds, lying neareſt to the New Town, and which was unoccupied by Houſes, and not ſubfeued, to the Extent of about Two Acres.—He alſo made a voluntary Offer to the Magiſtrates of *Edinburgh*, for the Uſe of the Corporation, of an Angle of his Ground to the South-Eaſt to enable them to make a Road from the new Bridge to *Leith*.

1773. In Spring 1773, the Reſpondent cleared the Ground for building ſome Houſes upon it, in the Form of a Square; but he was informed that the Magiſtrates of *Edinburgh*, who, *virtute officii*, are Governors of *Herriot*'s Hoſpital, were reſolved to
16 April, 1773. challenge his Right, as they thought it detrimental to the Intereſt of the City: Accordingly, on the 16th of April, they took a Proteſt againſt him, and applied to the Court of Seſſion for a Suſpenſion of (*i. e.* Injunction to ſtop Proceeding in) the Building, under Pretence, that the above-recited Clauſe in the Charter againſt Digging, &c. implied a Prohibition againſt Building.

To this it was anſwered, That the Charter contained no Limitation as to Building, and that none ſuch could be implied from any Words uſed in it.—And the Lord *Auchinleck*, Ordinary, pronounced the following Interlocutor;
12 July, 1773. "Finds that the Clauſe founded on by the Complainers (*i. e.* Appellants) by which the Feuer is debared from "digging for Stones, Sand, or any other Thing within the Ground feued, and from uſing the ſame in any other Way "than by the ordinary Labour of Plough and Spade, is to be underſtood only to reſtrain the Feuer from any Abuſe of the "Ground, which might render the Superior's Security uncertain; in ſhort, was a Stipulation that he was to uſe it "*Salva Subſtantia*, but by no means imports, that the Feuer was not to keep his Grounds in Graſs, if he choſe it, or "build Houſes upon it, though both of theſe fall under the Words of the Limitation equally; and as the Complainers "do not pretend the Feuer is bound to keep the Ground perpetually dug or ploughed, and do not deny there have been "ſundry Houſes built on it without Challenge, refuſes the Bill" (*i. e.* diſcharges the Injunction.)

The Governors of the Hoſpital then brought an Action of Declarator before the Court of Seſſion for having it found that the Reſpondent had, by the Terms of the Feu Charter, no Right to build, or to uſe the Ground in any other Way than by the ordinary Labour of Plough and Spade; and the ſame having come to be argued before the Lord Ordinary, his Lordſhip took the Cauſe to report, and ordered both Parties to give in Informations to the whole Court.

The Appellants at the ſame Time preſented a reclaiming Petition againſt the Lord Ordinary's Interlocutor above recited, which was anſwered by the Reſpondents, and Informations given in for the Parties.

Appellants Argument. The Appellants, by their Petition and Information, contended that Feudal Grants are *ſtricti Juris*, and that every doubtful Clauſe ought to be interpreted againſt the Grantee—That the Clauſe of Prohibition in the aforeſaid Charter conſiſted of two Parts; 1*ſt*, An Injunction upon the Vaſſal not to dig for Stones, Coal, Sand, or any other Thing within the ſaid Ground. 2*dly*, Not to uſe the ſame in any other Way than by the ordinary Labour of Plough and Spade—That the Intention of this laſt was to prevent Building, that the general Words reached every ſuch Uſe of the Property, and that the Hoſpital probably had in View that the Town might, in ſome after Period, be extended.

Reſpondents Argument. The Reſpondent anſwered, and inſiſted, That the Clauſe in *Cleland*'s Charter neither expreſſes or implies any Prohibition, or even Reſtriction, from Building.—That whatever may have been the Rule of Interpretation in regard to Feudal Rights in their Antient Form, when they were conſidered as Donations flowing from the Over Lord, dependent on his Will and Perſonal to the Grantee, without going to his Heirs, the ſame could in no Shape apply to the preſent Situation of our Land Rights, the Vaſſal's Intereſt having for Centuries been conſidered as the *Utile Dominii*, the Object of Alienation and of Commerce, and the Vaſſal himſelf as the abſolute and full Proprietor of the Eſtate.

A Feu Holding does not differ from a Blench Holding in any other Reſpect than that in the one, a Life Quit-Rent or Fee-Farm Duty, is paid to the Superior; in the other, only a nominal Duty. But the Vaſſal or Feuer is, in every reſpect, Proprietor, entitled by the Nature of his Right to the full beneficial Uſe and Diſpoſition of the Property: And it is founded both in Law and in Expediency, that this Right ſhould be amply interpreted in his Favour, and that no Limitations on his Property ſhould be implied, whether in Queſtions with the Superiors or with others. All Forfeitures and Limitations being, in the Eye of the Law, odious, and never to be extended.

In point of Fact the Reſpondents ſtated, That this Clauſe in *Cleland*'s Charter manifeſtly took its Riſe from the following Circumſtance appearing upon the Record of the Hoſpital:—In 1725, *James Brownhill* having undertaken great Building on the North Side of the *High Street* of *Edinburgh*, made Application to the Hoſpital for a Feu of Two Acres of their Ground, in which there was a Stone Quarry, in order that he might have the Uſe of the Quarry for his Buildings: This the Hoſpital agreed to, on his paying 4½ Bolls of Barley of Feu-Duty *per* Acre yearly, and becoming bound to incloſe the Ground, at the ſame Time diſcharging him from building Houſes upon it for Artizans of any ſort, for trading on their ſeveral Trades to the Prejudice of the Town, meaning that he was not to accommodate unfree Artiſts to interfere with the incorporated Tradeſmen of the City, this Ground being conveniently ſituated for that Purpoſe.

The Uſe which *Brownhill* made of this Feu, was to convert the Ground into an abſolute Ruin, by taking away the whole Surface, and likewiſe digging out the Quarry; and afterwards, having become a Bankrupt, he was unable to pay the Feu Duty, nor could any thing be recovered out of the Ground itſelf, ſo that this Part of the Hoſpital Revenue was altogether

altogether loſt. The Governors, therefore, reſolved, for the future, to put in a Clauſe, tying up the Vaſſals from digging and deſtroying the Ground, ſo as to render it ineffectual for the Feu-Duty; and it appears that this Reſolution was formed between the Date of *Cleland*'s Application for his Feu, and his obtaining the Charter. The firſt and only Mention of it in the Hoſpital's Record, is in a Minute of Date the 29th of *Auguſt* 1733, bearing, that the Governors agreed to the Propoſal of one *Humphrey Colquhoun* for a Feu of a Piece of Ground about a Mile and a Half diſtant from the Town, and that his Charter muſt contain the ordinary Clauſes, and "That this, and all *ſubſequent original Feus*, do contain a Clauſe whereby "it ſhall not be leiſom (lawful) to the Feuer to dig for Stones, Coal, Sand, or any other Thing within the ſaid Ground, nor "to uſe the ſame in any other Way than by the ordinary Labour of Plough and Spade without the expreſs Conſent, &c."

The Minute of the ſame Date, agreeing to *Cleland*'s Feu, made no Mention of any ſuch Clauſe, becauſe there had been no Treaty with him about it, though the Clerk of the Hoſpital in making out his Charter in *Auguſt* 1734, thought proper to throw it in; but the Fact which happened with regard to *Colquhourn*'s Feu, as well as the others in the ſame Situation, afforded very clear Evidence that the Clauſe was not meant againſt Building; for *Colquhoun* himſelf, as ſoon as he got his Feu, built ſeveral Houſes on it without Challenge.

It is ſtated in the late Inſtitute of the Law of *Scotland* as "a Maxim *univerſally* received, that in all Deeds which "contain both general and particular Clauſes, aſcertaining their Extent, whether *Conveyances*, Diſcharges, Bonds of Ar-"bitration, &c. the General Clauſe is not to be extended to Subjects or Claims of a *different Kind*, or of *greater* "*Importance*, than any of the Particulars mentioned in the Special; for if the Granter had not intended to confine himſelf "to Subjects of the ſame Species, or of as ſmall Importance as thoſe which appear from the Deed to have been under his "view, it is preſumed, he would have expreſſed his whole Intention as clearly as he had done that ſpecial Part of it." B. 3. tit. 4. § 9.

30 July, 1773. Upon adviſing the Cauſe, the Court pronounced Judgment in theſe Words. "On Report of the Lord *Auchinleck*, and "having adviſed the Informations, *hinc inde* find, That the Defender *Walter Ferguſon* (Reſpondent) is intitled to carry on "his Buildings on his Grounds mentioned in the Declarator, aſſoilzie, (*i. e.* acquit the Reſpondent) and decern."

26 Nov. 1773. The Appellants gave in a Reclaiming Petition againſt this Judgment; and the Court, upon adviſing the ſame with Anſwers for the Reſpondent, adhered to their former Interlocutor, and refuſed the Petition.

The Appellants conceiving themſelves and the Hoſpital to be aggrieved by the ſaid two Interlocutors of the Court of Seſſion of the 30th *July*, and 26th *November*, 1773, before recited, have appealed from the ſame to your Lordſhips: But the Reſpondents humbly hope that theſe Interlocutors will be affirmed, and the Appeal diſmiſſed with Coſts, for the following, among other

REASONS.

I. The Vaſſal in a Feu Holding is full and abſolute Proprietor, ſubject only to the Payment of a certain Duty to the Superior, and to certain Caſualties of Superiority upon the Entry of Heirs and Singular Succeſſors or Purchaſers. —The *Dominium utile* is in the Vaſſal, who may diſpoſe of the Eſtate at Pleaſure, and is intitled to every Uſe of it *a Cælo uſque ad centrum* by the Nature of his Right, and there is no Reſemblance between the Condition of a Vaſſal and that of a Leſſee, who has only a Temporary Uſe of the Surface, and has no Property in him.

II. Conditions inſerted in a Feu Charter, which are not uſual, and not ſtrictly agreeable to the Nature of the Vaſſal's Right of Property in the Fee, and particularly ſuch as limit him in the Exerciſe of his Property, ought to receive a narrow and limited Conſtruction, ſo as not to go beyond the preciſe Caſe ſpecified in the Inveſtiture, eſpecially in any Queſtion with a ſingular Succeſſor in the Feu Right; and in general the Rule of Law is, That Limitations upon Property are to be ſtrictly interpreted, and are not to be raiſed up by Implication and artificial Argument without preciſe Words.

III. The Limitation here contended for by the Appellants is of the moſt unfavourable Kind; the Tendency of it being to tie up the Hands of the Vaſſal from taking the moſt beneficial uſe of his Property, when, at the ſame Time, the Superior, in whoſe Favour this Condition is ſuppoſed to have been meant, can take no Benefit from it; for if the Vaſſal cannot build on his own Property, far leſs can the Superior build on the Vaſſal's Property; ſo that this Ground muſt become a Deſert in the Middle of Buildings.

IV. If any Ambiguity ſhould appear in the Words, the ſame ought to be explained againſt the Granter of the Charter, upon this general Rule of Law. "*Contra eum faciendum eſſe pactorum duorum interpretationem qui ea oppoſuit quique ſuæ debet imputare, imprudentiæ quod apertius locutus non ſit. Ac pro inde ſi a venditore pactis profecto fuerit, adverſus eum illa de cauſa interpretationem fieri equum eſt.*" Voet. Lib. 18. Tit. 1. § 27.

V. General Words ſuperadded to particular ones ought never to be extended to Matters of a different Kind, or of greater Importance than thoſe ſpecially enumerated; for if theſe had been in View, they would not have been omitted, and this applies remarkably to the preſent Caſe; for no two Things can be more diſtinct, or indeed more oppoſite, than the *Improvement* of the Eſtate by *Building*, and the *Deſtruction* of it by *Digging*. If the Hoſpital had meant to debar, not only the Deſtruction of the Ground, but alſo the Improvements of it, it is impoſſible to believe that this laſt would have been omitted, and left to be gathered from general and ambiguous Words. The Prohibition of Building was of infinitely greater Importance, as to the Vaſſal's Intereſt, than the Article of Digging: It may be ſuppoſed that a Vaſſal would readily agree to the one, while he would ſtartle at the other, if propoſed to him.—To tie up a Man's Hands from Building upon his Property, in the Neighbourhood of a great City, is a very extraordinary Condition, and if intended to be binding, ought to be ſet forth in clear Terms upon the Face of the Inveſtiture.

VI. The general Words of this Clauſe are merely explicative of the particular Injunctions againſt deſtroying the Ground by digging for Stone Quarries, or any other Thing.—To hold it as a ſeparate Prohibition would make the particular Words altogether unneceſſary, and would lead to an Impropriety both in Senſe and Language.—Even if the general Words had ſtood ſingle, the Meaning now put on them by the Hoſpital goes too far.—A Court of Law would have explained them *ſecundum ſubjectam materiam*, and according to the probable and rational Meaning of the Parties. For Example, could it have been maintained that the Vaſſal was not at Liberty to turn his Field into Graſs; this is not the ordinary Labour of Plough and Spade; or that he was not at Liberty to plant a Tree, raiſe a Fruit-Wall, or make a Bowling-Green; theſe Things are further removed ſtill from the ordinary Culture by Plough and Spade.—Yet it is believed no Court would have denied the Exerciſe of theſe Acts of Property to the Vaſſal, even if the general Words had ſtood by themſelves without any particular ones to explain them; but where the particular Words are taken in, the Object is clear—to prevent Waſte, not to debar Improvement.

VII. The Hiſtory of the Clauſe affords very clear Evidence that it was never meant againſt Building. It took its Riſe from a very different Circumſtance, and the Hoſpital never complained of Building; on the contrary, in every Inſtance encouraged and ſometimes required it; and in fact many of their Feus are covered with Buildings. If at any Time, for a particular Reaſon, they thought it neceſſary to regulate the Extent or Manner of Buildings, they put in a Special Clauſe to that Purpoſe, as in the Caſe of *Brownhill*, and ſome Caſes ſubſequent to 1753; but they never, in any Inſtance, put in a total Prohibition; and the common Practice in Caſes ſimilar ought to have Weight in explaining what Parties meant.